No. _____

Supreme Court, U.S.
FILED

03 401 JUN 26 2003

In The

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

Caren Tidwell
Petitioner/Involuntary Pro'se Litigant,

vs.

The Alias "The Law Offices of Clay Ragsdale"
Respondent,

On Petition for Writ of Certiorari
To The Jefferson County Alabama Civil Court
Underlying Case # CV 96-5555
To The Jefferson County Alabama Civil Court
Case # CV 96-5555 and CV 00-7410
The Honorable Judge Joseph Boohaker, Presiding
To the Alabama Court of Civil Appeals
Case #2010679

On Appeal from the Supreme Court of Alabama
Case #1020287

PETITION FOR A WRIT OF CERTIORARI

Caren Tidwell*
3300 Casey's Crossing
Birmingham, Alabama 35215
(205) 681-1621

*Involuntary Pro'se Litigant/Petitioner

4 1 PP

QUESTIONS PRESENTED FOR REVIEW TO THE COURTS IN ALABAMA, TO THE HONORABLE AND PRESTIGIOUS UNITED STATE SUPREME COURT, AND COPIED AS REQUIRED IN THE BODY OF THIS PETITION

In accordance with Alabama's Rules of Appellate Procedure, I, the Petitioner, Caren Tidwell, presented the following questions of first impression to the Alabama Supreme Court and I now ask the Honorable United States Supreme Court to please consider the questions, conflicts, and issues presented in these questions and in the Body of my Petition:

Question # 1: "If an attorney fails to enter specific evidence supporting his client's position, resulting in the opposing counsel successfully having the critical evidence and testimony excluded from consideration of the trial court in a post trial motion, or excluded from consideration of the upper level courts on appeal, can that attorney conceal his error from his client? If breaches in agreements, neglect, deceit, and undisclosed conflicts of interest, etc., is shown, is expert witness testimony required?" (Question asked in Petition for Writ of Certiorari to the Alabama Supreme Court, pages 3-4)

Question # 2: "If an attorney promises that a specific action will be handled and he fails to handle it, does the Law require expert testimony?" (Question asked in Petition for Writ of Certiorari to the Alabama Supreme Court, page 4)

Question # 3: "If opposing counsel in the underlying case in a legal malpractice action provides an affidavit and is willing to testify for the Plaintiff/Appellant/Petitioner, is the paid testimony of an expert still mandatory?" (Question asked in Petition for Writ of Certiorari to the Alabama Supreme Court, page 4)

Question # 4: "If two employees operating the same machine at the same job and are identically injured, one employee receives his worker's comp but the other does not (because of the attorney's failures in Question 1), can this factual event be

used in substitution for the educated guess of the expert witness? Does a litigant have to hire an expert witness to make an educated guess when an identical situation occurred? Can the actual events and identical situation be substituted for an educated guess of a paid expert witness?" If not, is this considered Justice for Sale? (Question asked in Petition for Writ of Certiorari to the Alabama Supreme Court, page 4)

LIST OF PARTIES

Alexander, Craig

Girardeau, Robert M.

Thompson, Martha Leach

The Alias "The Law Offices of Clay Ragsdale"

M Clay Ragsdale

Ansel Strickland, Jr.

The Jefferson County Alabama Civil Court
Underlying Case # CV 96-5555
The Jefferson County Alabama Civil Court
Case # CV 96-5555 and CV 00-7410
The Honorable Judge Joseph Boohaker, Presiding

The Alabama Court of Civil Appeals/Case #2010679

The Supreme Court of Alabama/Case #1020287

The Firm of Lange, Simpson, Robinson, & Somerville
Contracted by BellSouth, see Alexander above

Tidwell - The Plaintiff/Appellant/Petitioner
Caren Jane Jennings Tidwell
Involuntary Pro'se Litigant
*A Corporate Disclosure does not apply to this Petitioner.

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REASONS FOR GRANTING THIS WRIT/PETITION

As allowed under The *United States Supreme Court Rule FRAP 10*, the Involuntary Pro'se Plaintiff/Appellant/Petitioner, Caren Tidwell, respectfully request that the Honorable United States Supreme Court grant her Petition for Writ of Certiorari. Extraordinary circumstances, the questions of first impression, our Law, New Law, New Legal opinions that are inconsistent with the citations that the Court's relied on, a violation of the rules of procedure, legal precedent established by the United States Supreme Court and ignored by the Courts in the State of Alabama, her rights to equality and due process and in the interpretation of the Law, erroneous finding of facts by the Trial Court that led to the incorrect interpretation and incorrect Law to be applied to this case, violations of her Constitutional Rights, "Bad Faith" tactics - some ignored by the Courts, a manifestly unjust adverse ruling (which will continue for the Petitioner's lifetime) which was in no way the Legislative intent of the Law, and other compelling reasons listed below support her request for this petition to be Granted, other reasons listed include but are not limited to:

1. Questions of First Impression – Pages ii-ii

I (1) The *First Amendment* states that the Petitioner has "the RIGHT...to petition the Government for a redress of grievances." Is it a violation of this Petitioner's Constitutional Rights, as stated in the *First Amendment* and the *Fourteenth Amendment* to Deny this Petitioner's request for her Petition of Certiorari by Denying with No Opinion, stating that a Petition of Certiorari is a matter of judicial discretion and not a matter of Right (*FRAP 10 and A(Alabama)RAP 39 (a)*, just as was the ruling by the Alabama Supreme Court? (Occurred only after the Alabama Supreme Court Denied this Petitioner's Petition with "No Opinion" and this is the first time that this Petitioner has been able to

raise this issue because until the Alabama Supreme Court's denial, her rights had not been violated.) Pages 2 - 3
Under this section are also the following contentions:
a) Denial of her First and Fourteenth Amendment Rights by denying this Litigant her Right to have the Government "redress her grievances". (Pages 3-4) The Petitioner in this case is an INVOLUNTARY Pro'se Litigant that has been denied her request and rights for legal guidance and counsel and has incorrectly been held to the same stringent standards as lawyers, denying her effective counsel and equal rights (Page 5). She has been denied her "day in court" on a "legal technicality" which is against the legal precedent set by this very Court itself (Page 5). In holding this Petitioner to the same stringent standards as lawyers, the State did not provide an appropriate procedural response and therefore, denying her the opportunity to prevent the deprivation, and because of these errors, denials, and not allowing her the right to legal counsel, this Petitioner's Constitutional rights have been violated. All alternatives to allow this Petitioner to have the facts presented to the "finder of fact" were rejected by the Courts, making it impossible for this Petitioner to fulfill the requirements set by the Courts to allow her to have her day in Court. (Page 9). Violations under the Fourteenth Amendment to Petitioner's Constitutional Rights and this Petitioner did not receive equal protection under the Law. (In other areas of this Petition - the Fourteenth Amendment was violated many times in different situations, but here it is on Pages 9 (Several Fourteenth Amendment Rights were Violated on Pages 2 - 29. Her case was not "construed liberally" nor was her pleadings construed so substantial justice would be done (to the Pro'se Litigant) which is a violation of all Courts rulings and the Rules of Procedure (Page 10). In addition, the Courts incorrectly assumed that the plaintiff could prove no set of facts in support of her claim which would entitle her to relief and as you can see by the above rulings, this Petitioner was not given the consistency of the interpretation of the Law, denying her equality under the Law which is in violation of the Fourteenth Amendment. All of the above mentioned actions

and/or lack of actions (whichever applies), has deprived this litigant/Petitioner of her trial and her appeal and as cited in the case above is a violation of the Rules of Civil Procedure, and a constitutional deprivation (Pages 10 - 11). The Courts in Alabama also did not take this Pro'se Litigant's allegation to be true which is in conflict with rulings of Law in numerous states Page 10. The only way that this Petitioner's case could advance to trial was by "Justice for Sale" which is clearly in violation (Page 11). The Respondent holds a powerful position over other attorneys in this area and the Petitioner is an average injured American manual labor worker and because of this the Petitioner believes that her Fourteenth Amendment rights have been violated (Page 11 - 15). An identical case in which the Petitioner's machine partner was also identically injured (and settlement for one and trial for one were both held on the same day) has also violated her rights to "equal interpretation under the Law" which by denying her her rights and giving those rights to her machine partner, has violated her Fourteenth Amendment Rights (Page 12). Also, although this Petitioner's appeal was not vague, it was never heard, the incorrect Law was applied to her case (also violating her Constitutional Rights) because in cases of deceit, such as this one, the Law states that no expert witness testimony is required and those cases are permitted to go to the jury (Here the Alabama Courts are in conflict with other Courts of Last resorts in order states and this very Court itself) (Pages 11 - 15). The trial court was in error to not accept the Affidavit of Craig Alexander and other documents by Mr. Alexander within the Record (in the Record) as that of an expert witness because he bravely came forward on the Petitioner's behalf after her attorney's deceit was discovered. He is the original Defendant's counsel in the underlying case and one of the opposing counsel against the Petitioner in other matters and he even came forward on the Petitioner's behalf - this should signal the Courts that by this rare event (probably unprecedented), a substantial injustice has been done (Page 12 - 15, 15 - 16, 28). The Trial Court incorrected concluded that the excluded evidence would have been cumulative and

not important to the underlying case. This is not the case and see Appendix Q for the list of evidence that was in the Record that was not cumulative. This was a serious misapplication in the interpretation of the evidence in the Record which prevented this Petitioner from rightfully advancing her case to trial (pages 12 – 15, also see pages 18 - 19) – See Appendix Q in Volume 2) for a listing of the Evidence in the Record that was not cumulative to the Record and the Trial Court was in error for stating that it was cumulative to the Record, Here, Summary Judgment was improperly granted – Pages 4 – 5. Also please see Volume 2, Appendix J – Statement of the Case - for the explanation of this case and the deceit involved with her own prior attorney.

II. This Petitioner is being Held to a Mandatory, Unconstitutional, Process That Results in Justice for Sale as well as other reversible issues contained in this section (Pages 15 – 29).

5. Under No Circumstances is Justice for Sale (Page 15 - 16)

As shown, a mandatory expert witness is not required by Law in this case or appeal (due to breaches in agreements, neglect, deceit, an undisclosed conflict of interest, withholding errors made by the Petitioner's own attorney – deceiving his own client and not informing the Petitioner of the errors which denied the Petitioner the true facts of what had occurred during the handling of her cases which denied her the opportunity to make an informed and intelligent decision in how to proceed with her case, etc. The Respondent argued and the trial court held that mandatory expert witness testimony was required in this case and as shown below, mandatory expert witness testimony in this case is not required by Law and is not required in any cases such as this one which shows that again the inconsistency in applying the Law to this case which also is in violation of the Fourteenth Amendment. If mandatory expert testimony were required in all cases such as this one, it would be justice for sale and unconstitutional. Therefore due to the circumstances, this Petitioner has been unconstitutionally

required to purchase, pre-trial, her day in court and her attempt to receive justice.

6. No Mandatory Expert Witness Testimony is Required in this Particular Case Due to Deceit, An Undisclosed Conflict of Interest on this Appellee/Respondent's Part, Neglect, Breach of Agreement, An Attorney Failing To Inform His Own Client of His Firm's Errors Which Resulted In Critical Evidence Not Being Considered By The Trial Court or the Upper Level Courts on Appeal, Etc. See Excerpts from Original Complaint in Appendix Complaint, and by law the Petitioner's allegations in the complaint that were to be taken as fact and do not require any expert witness testimony.

7. Cross Examination of the Appellee/Respondent's Expert Witness Pre-Trial is also Justice for Sale. The Respondent's Expert Witness Also Used the Incorrect "Level of Care" to be applied to the Respondent's Performance Pages 18 - 19. Also, the Respondent's expert witness affidavit was due to be stricken due to the incorrect "Level of Care" to the standard of care that was evaluated (Page 19). The Petitioner was impeded during discovery which caused serious prejudice in many areas of this case (Page 19). The Court ignored all of the above contested issues and denied all of the Petitioner's Motions.

8. Many Alternatives to Expert Witness Testimony Acceptable by Law were Proposed and Improperly Rejected by the Court - All Alternatives to Expert Witness Testimony proposed to the Trial and Appellate Courts are located in Appendix N. (Page 20) Other violations of the Petitioner Rights and reversible errors detailed in this Petition are located on Pages 20 - 28. Also please note that the Alabama Supreme Court announced on November 27, 2002 (after this case was on appeal but before the Alabama Supreme Court denied this Petition) a new opinion that conflicts with the trial court's opinion in this case further violating this Petitioner's Fourteenth Amendment Rights. A Motion was filed asserting this new opinion that would override the

opinion of the Trial and Alabama Civil Court of Appeals but the Supreme Court of Alabama ignored this ruling and this Motion (page 22). Also, the "old opinion" was also in conflict to rulings from other Supreme Courts (Page 22). The trial court was in error and the upper level courts were in error by not allowing this Petitioner to use an alternative to expert witness testimony or to select another expert witness (due to her tragic events in her life, which include illness, September 11th events, and death of an immediate family member). Petitioner asked for continuance before discovery was over but a continuance was cruelly and improperly denied. The Courts were also in error to deny this litigant all of the expert witness alternatives, allowed by rule and law, or to allow this Involuntary Pro'se Litigant to be able to select another expert witness (An affidavit from the original expert witness is in the Record – due to her emotional state after the tragic events in her life, she is not emotional able to render any opinion). The Courts were also in error by denying the Petitioner's motion to strike a "fake deposition in the record" submitted and used against the Petitioner in the Record (Pages 22 – 24). Many other alternatives to expert witness testimony were proposed but all rejected by the trial courts and not taken up by the Appellate Courts in Alabama, these include but are not limited to a ruling that was in conflict with the substantial evidence in the Record, the proposed and asserted *The Doctrine of Res isa loquior*, and Summary Judgment was improperly granted to this Respondent when by Law Rule 56 (ARAP) was not appropriate in this case, especially involving an Involuntary Pro'se Litigant, Violation of the Eighth Amendment and the Fourteenth Amendment of the Petitioner's Constitutional Rights have been violated, also, the rulings in this case are inconsistent to the legal precedent set by the United States Supreme Court itself, the Rulings of Law in many other states and even in conflict with the legal precedent set by denying this Involuntary Pro'se Litigant on a legal technically which prevented her from advancing her case to trial. A comparison of the cases used by the trial court and then cited in their "No Opinion" Denials do not apply to the appeal at hand and a detailed

comparison of these cases to this appeal is located in Appendix S. These cited cases were not a "simple mistake" it was acts of fraud, deceit, misrepresentation, etc. (Page 28) and have absolutely no relevance to the appeal at hand (Pages 28). Other issues are also included in the Petition and the Questions of First Impression are located in the Body of the Petition at page 29.

TABLE OF AUTHORITIES

See Full Citations and Page Numbers in Volume 2 Appendix K

FRAP 10

The First Amendment in the Bill of Rights

Jordan v Gilligan, 500 F2d 701 at 707, (6th Cir ND Ohio 1974)

Daniel v Williams, 474 US 327 at 337/8, (1985)

Bertlesman & Phillips, Ky Practice, Vol 6 at p. 144. - Smith v Isaacs, 777 SW2d 912 at 715, (1989)

SEC v Vanco, 283 F2d 304 at 305, (3rd Cir 1960

Puckett v. Cox United States Court of Appeals (1972). Judge Crawley (from the Appellate Court in Alabama where this Petitioner's appeal was filed), Rule 8 (f), Alabama Rules of Civil Procedure." Quoted from Supreme Court of Alabama, 1970987, 1999

Haines v. Kerner, 404 U.S. 519 (1972) (cites omitted)

Conley v Gibson, 355 US 41 at 45/6, (1957); Haines v Kenner, 404 US 519, (1972) cited in Estell v Gamble, 429 US 97, (1976); also Hughes v Rowe, 449 US 5 at 10, (1980); Little v Streater, 452 US 1 at 5/6, (1981) due process; Wilwording v Swenson, 404 US 249 at 250/51, (1971); Wright v Collins, 766 F2d 841 at 846, (4th Cir 1985); Jacobson v Filler, 790 F2d 1362 at1367, (9th Cir 1986); Borzeka v Heckler, 739 F2d 444 at 447 n2, (9th Cir 1984); Garaux v Pully, 739 F2d 437 at 439, (9th Cir 1984); Parisie v Greer, 705 F2d 882 at 898, (7th Cir 1983); Moore v Fla, 703 F2d 516 at 520, (11th Cir 1983); Meritt v Faulkner, 697 F2d 761 at 769, (7th Cir 1983); Myers v US, 636 F2d 166 at 168/69, (6th Cir 1981); Gordon v Leeke, 574 F2d 1147 at 1152/53, (4th Cir 1978); Roseboro v Garrison, 528 F2d 309, (4th Cir 1975)

Fernandez v. United States, 941 F.2d 1488, 1491 (11th Cir.1991); see also Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 596, 30 L.Ed.2d 652 (1972)

United States Court of Appeals, Eleventh Circuit. No. 96-6886, SANDERS v. UNITED STATES of America, May 9, 1997

*See Simpson v. Horn, No. Civ. A. 95-8028, 1998 WL 559802 at *2 (E.D.Pa. Aug. 31, 1998); Hackman v. Valley Fair, 932 F.2d 239, 241 (3d Cir. 1991)*

*(Memorandum Opinion at 2 n.2) (citing Hayes v. Muller, No. CIV. A. 96-3420, 1996 WL 583180, at *2 (E.D. Pa. Oct. 10,*

The Fourteenth Amendment

The Fifth Amendment

As one of the Fourteenth Amendment's authors, Senator Jacob M. Howard of Michigan, declared;

Frank v Mangum, 237 US 309, (1916.

Griffin v Illinois, 351 US 12 at 18 (1955); Smith v Bennett, 365 US 708, (1961); Lane v Brown, 371 US 477, (1963); Long v Dist Court of Iowa, 385 US 192, (1966); Gardiner v Calif, 393 US 367, (1969); Lindsay v Normet, 405 US 56 at 77, (1971); Cochran v Kansas, 316 US 255, (1942); Frank v Mangum, 237 US 309 at 327, (1914)

Maxwell v Dowell, 176 US 581 at 602, (1899), cites Leeper v Texas, 139 US 462 at 467, (1891)

Caldwell v Texas, 137 US 692 (1891) cited in Merchant v Penn RR, 153 US 380 at 382, (1893)

Cochran v Kansas, 316 US 255, as cited in Dowd v Cook, U S, 340 US 206 at 208 (1950); Harper v Va Board of Elections, 383 US 663 at 673, (1966) Black J.

Pennoyer v Neff, 95 US 714 at 733, (1877); Davidson v N Orleans, 96 US 97, 104, 107, (1878); Hurtado v Calif, 110 US 516, (1883);

Missouri RR v Humes, 115 US 512 at 519, (1884/5); as cited in Dent v W VA, 129 US 114 at 122/24, (1888)

Regan v NY, 349 US 58 at 66, (1954)
Vaughn v Trotter, 516 F Supp 886 at 892, (MD Tenn 1980);

Olson v. Auto Owners Insurance Company, 700 SW 2d 882, 884, (MO App.E.D. 1985) (C. 389 #1)

ALABAMA DECLARATION OF RIGHTS - (Article I of the 1901 Constitution of Alabama) as amended through 1966 - ARTICLE I. DECLARATION OF RIGHTS "That the great, general, and essential principles of liberty and free government may be recognized and established, we declare:

Sec. 13 "That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay

Alabama Code 1975, Statute 6-5-572 (3) (a) and (b); also see Statute 5-5 580

17 Mass. App. At 565-567, 460 N.E.2d at 1050.

The Doctrine of Res isa loquior

Cox v. May Department Store Company 903 P. 2d 119 (1995)

Daniel v Williams, 474 US 327 at 337/8, (1985)

Foman v Davis, 371 US 178 at 181, (1962); NAACP v Alabama, 377 US 288, (1964); Hovel v Elliott, 167 US 409 at 413/14, (1897);

Bertlesman & Phillips, Ky Practice, Vol 6 at p. 144. - Smith v Isaacs, 777 SW2d 912 at 715?, (1989)

Conley v Gibson, 355 US 41 at 48, (1957); Schiavone v Fortune, 477 US 21 at 27, 39, (1985); Zenith Radio v Hazeltine, 401 US 321 at 335, (1970); Williard Dairy v Nat Dairy, 373 US 934 at 935, (6th Cir 1962) denied- Black J dissent; US v Hougham, 364 US 310 at 317, (1960); Foman v Davis, 371 US 178 at 181, (1962); Mayor v Ed Equality League, 415 US 605 at 634, n1, (1973) White J dissent-

Sup Ct New Rule Order, 346 US 945 at 946, (1954) Black CJ, as cited in Schiavone v Fortune, AKA Time Inc., 477 US 21, (1986)

L&N v Schmidt, 177 US 230 at 236, (1899) as cited in Simon v Craft, 182 US 427 at 436, (1900); In Re Summers, 325 US at 567, (1944) citing Nashville C&RR v Wallace, 288 US 239 at 249, (1918); Central Vermont RR v White, 238 US 507 at 511, (1914) as cited in US v Obermeier, 186 F2d 243, (1950)

Catron vs Jones, 135 SW2d 419, (1940); Roe v Gentry, 162 SW2d 208 at 210, (1942); Jordan v Olive Hill, 162 SW2d 229 at 231, (Ky 1942); Logan v Bradford, 178 SW2d 607, (Ky 1944); Stivers v Baker, 9 SW 491 at 492, (Ky 1888); Ashland Oil v Hudson, 275 SW2d 585, (Ky 1955); Maggard v Johnson, 229 SW2d 764, (Ky 1950); McBride v Moss, 437 SW2d 726, (1969

Seventh Amendment

See Welch v. Celotex Corp., 951 F.2d 1235, 1237 (11th Cir.1992)

Seventh Amendment

See Welch v. Celotex Corp., 951 F.2d 1235, 1237 (11th Cir.1992) Barbour v. Merrill, 48 F.3d 1270, 1277 (D.C.1995).

See Combs, 106 F.3d at 1537

As quoted in Chapman v. AI Transport, Nos. 97-8838, 97-9086 and 97-9269, United States Court of Appeals, Eleventh Circuit, July 13, 1999.

*See Simpson v. Horn, No. Civ. A. 95-8028, 1998 WL 559802 at *2 (E.D.Pa. Aug. 31, 1998); Hackman v. Valley Fair, 932 F.2d 239, 241 (3d Cir. 1991)*

*(Memorandum Opinion at 2 n.2) (citing Hayes v. Muller, No. CIV. A. 96-3420, 1996 WL 583180, at *2 (E.D. Pa. Oct. 10, 1996)*

RULES OF PROCEDURE 56
EIGHTH AMENDMENT

Ham v. Sith, 653 F.2d 628 (D.C.Cir.1981)

Olson v. Auto Owners Insurance Company, 700 SW 2d 882, 884, (MO App.E.D. 1985) (C. 389 #1)

THE UNITED STATES OF AMERICA
PETITION FOR WRIT OF CERTIORARI

The Petitioner, Caren Tidwell, respectfully prays and petitions for a writ of certiorari to answer the questions of first impression and to review the rules, rulings, procedures, and judgments below. She also request that this Honorable Court review her case to see if her Constitutional Rights have been violated and to see if she has received the due process that she is entitled to, did she suffer "cruel and unusual punishment" under the Law, and if she has been treated "equally" under the Law from The Jefferson County Alabama Civil Court, The Alabama Court of Civil Appeals, and The Supreme Court of Alabama in the controversy that involves the Respondent, The Alias "The Law Offices of Clay Ragsdale."

OPINIONS BELOW

The Opinions of the Jefferson County Alabama Civil Court, The Alabama Court of Civil Appeals, and The Supreme Court of Alabama are shown in detail in *Volume* 2 in the Appendix. Some of the Rulings are lengthy and a 2nd Volume became necessary as the Rules allow. Please keep in mind that the Ten Commandments fight at the Alabama Supreme Court has been ongoing during the time of this case/appeal and could have distracted justice from being administered in this case.

STATEMENT OF JURISDICTION

This Petition is sought for review from Jefferson County Civil Court. A Motion of Summary Judgment was entered in favor of the Defendant/Respondent, "The Alias The Law Offices of Clay Ragsdale" *(Volume 2, Appendix A)*. The Petitioner; Caren Tidwell filed a post trial motion of reconsideration which was denied *(Volume 2, Appendix B)*. The Petitioner (Plaintiff) Tidwell filed an Appeal with the Alabama Court of Civil Appeals after all post trial motions were denied *(Volume 2, Appendix C)*. The Petitioner timely filed an Application for Rehearing *(Volume 2, Appendix D)*, however, her Application for Rehearing was denied on August 30, 2002 *(Volume 2, Appendix E)*. The Petitioner timely filed an application of rehearing but her motion was

overruled *(Volume 2, Appendix F)*. The Petitioner then filed a Petition of Cert with the Alabama Supreme Court but her Petition was Denied No Opinion even though she followed all of the Alabama Rules of Appellate Procedure Rule # 39 (k) Motion and substituted Facts for the Record as the Rules allow and the only Facts before the Alabama Supreme Court were her version of the facts since the Record was not before the Alabama Supreme Court on preliminary review. This Denial was on March 27, 2003 *(Volume 2, Appendix G)*. This Petition was timely filed and was mailed by United States Certified Mail on June 26, 2003 *(Volume 2, Appendix H)*. According to the instructions sent to me, the jurisdiction of this Court in my Petition is invoked under *28 U.S.C. § 1254 (1)* and the *First Amendment*. This case began in 1996 and due to that fact, all of the opinions had to be put in the Volume 2, Appendix I, but I have placed the ones for Jurisdictional Purposes Here.

CONSTITUTIONAL AND STATUTORY PROVISIONS

STATUTES – See *Appendix L Volume 2* for Full Text

The Constitution of the United States/The Bill of Rights
The First Amendment
Seventh Amendment
Eighth Amendment
The Fourteenth Amendment
Alabama Declaration of Rights - (Article I; Section 13)
The Doctrine of Res isa loquior
AL Code 1975, SS 6-5-572 (3) (a) and (b); also Statute 5-5 580

STATEMENT OF THE CASE

When the portions of the record relied on under the subparagraph are voluminous, they shall be included in the appendix referred to in *subparagraph 1 (I) FRAP 14*. Since there are so many facts in this case that began in 1996, the Statement of the Case had to be put in the Appendix in order to inform this Court of the actual facts and events that has occurred in this case. See *Volume 2, Appendix J)*.

REASONS FOR GRANTING THE PETITION AND THE BODY OF THE PETITION

As allowed under *United States Supreme Court Rule FRAP 10*, the Involuntary Pro'se Plaintiff/Appellant/Petitioner,

Caren Tidwell, respectfully request that the Honorable United States Supreme Court grant her Petition for Writ of Certiorari. Extraordinary circumstances, the questions of first impression, our Law, New Law, New Legal opinions that are inconsistent with the citations that the Court's relied on, a violation of the rules of procedure, legal precedent established by the United States Supreme Court and ignored by the Courts in the State of Alabama, her rights to equality and due process and in the interpretation of the Law, erroneous finding of facts by the Trial Court that led to the incorrect interpretation and incorrect Law to be applied to this case, violations of her Constitutional Rights, "Bad Faith" tactics, some ignored by the Courts, a manifestly unjust adverse ruling (which will continue for the Petitioner's lifetime) which was in no way the Legislative intent of the Law, and other compelling reasons listed below support her request for this petition to be Granted.

1. The *First Amendment* states that the Petitioner has "the RIGHT...to petition the Government for a redress of grievances." Is it a violation of this Petitioner's Constitutional Rights, as stated in the *First Amendment* and the *Fourteenth Amendment* (nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws), to Deny this Petitioner's request for her Petition of Certiorari by Denying with No Opinion, stating that a Petition of Certiorari is a matter of judicial discretion and not a matter of Right (*FRAP 10 and A(Alabama)RAP 39 (a)*, just as was the ruling by the Alabama Supreme Court? (Occurred only after the Alabama Supreme Court Denied this Petitioner's Petition with "No Opinion" and this is the first time that this Petitioner has been able to raise this issue because until the Alabama Supreme Court's denial, her rights had not been violated.) The *First Amendment* states that the Petitioner has "the RIGHT...to petition the Government for a redress of grievances." This has long since been considered a Right. It was protected under the *English Bill of Rights of 1689*. This Petitioner, Caren Tidwell, Petitions this Honorable Court at this time to

exercise her right to have her grievances redressed and her appeal reviewed by Petitioning this Court. Tidwell argues that this is a violation of her *First and Fourteenth Amendment* Rights. To deny this Petitioner's request for her Petition for Writ of Certiorari by "Denying" with "No Opinion", (leaving an unlawful and manifestly unjust ruling never even allowing her the privilege to know why she was denied or how the Courts could just disregard the Rules and Law applicable and asserted in this case and her Rights stating that a Petition of Certiorari to State and Federal Supreme Courts is a matter of Discretion and not a matter of Right *(FRAP 10, ARAP 39 (a)*, just as was the ruling by the Alabama Supreme Court? The Petitioner claims that something wrong has been done to her, she has not had the Government Redress her grievances, nor has she had the benefit of equal rights and due process as instructed by the *Fourteenth Amendment* (some Petitioners get their grievances redress while others do not which is a violation of the *Fourteenth Amendment*), and she PRAYS that this Court will correct the injustice, just as the Legislative Branch and our Laws intends for them to do. Even though the *First Amendment* states that this Petitioner has the Right to Petition the Courts for a "redress of grievances", the rules state (*FRAP 10*) "Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons." If it is a matter of right, then it should not be called a "Petition" for a redress of grievances to a Government Branch (the Courts) which is protected under her *First Amendment* Rights. The Petitioner Prays that this Court fulfills her *First and Fourteenth Amendment Rights,* grants her Petition and allow her the opportunity to submit a brief on the merits so a "redress of her grievances" and the injustice that has occurred can be explored by this Court.

I. The Petitioner in this case is an INVOLUNTARY Pro'se Litigant that has been denied her request for legal guidance and counsel and has incorrectly been held to the same stringent standards as lawyers, denying her effective counsel and equal rights, which is against the legal precedent set by this very Court itself. In holding this Petitioner to the same

stringent standards as lawyers, the State did not provide an appropriate procedural response and therefore, this Petitioner's Constitutional rights have been violated.

First, it is important that this Court knows that the Petitioner in this case is an INVOLUNTARY Pro'se Litigant that has been denied her request for legal guidance and counsel and has incorrectly been held to the same stringent standards as lawyers, denying her effective counsel and equal rights, which is against the legal precedent set by this very Court itself. The Courts in any State are bound to follow the legal precedent set by the Honorable and Prestigious United States Supreme Court. This legal precedent was not followed in this case, which is another point of contention in her appeal and in this Petition. In holding this Petitioner to the same stringent standards as lawyers, the State did not provide an appropriate procedural response and therefore, this Petitioner's Constitutional rights were violated. *The United States Supreme Court has stated "The denial of a pro se litigant on technical ground is against the legal precedent from the US Supreme Court applicable to the pro se...[d]ecisions of the US Supreme Court rendered by written opinion are binding on all courts, state and federal. The court's holding is stare decisis and cannot be overruled except by the court itself. Even the court's dicta has persuasive precedential value." Jordan v Gilligan, 500 F2d 701 at 707, (6th Cir ND Ohio 1974).*

The denial of a pro se litigant on technical ground is against the legal precedent from The United States Supreme Court applicable to the pro se. This Petitioner's argument that she should not be held to the same standards as licensed, educated attorneys is much stronger than a Pro'se Litigant foolishly attempting to represent themselves. This Litigant desires to be represented and given the same advantage as someone with legal guidance and counsel. She repeatedly made her desires known to the Court but her rights were denied. This Petitioner was forced into this (Involuntary) Pro'se position and her decision to be a Pro'se Litigant was not a voluntary one; it was her only option if she was to attempt to receive justice and the wages, medical care, and benefits that she was rightfully entitled to in the first place. This Petitioner has a 12th grade education and was severely

injured in a manual labor job position. All States are guided by the United States Supreme Court's legal precedent and opinions. Here, the Courts in Alabama did not provide appropriate procedural responses and this Petitioner was not given the opportunity to prevent the deprivation. All alternatives to allow this Petitioner to have the facts presented to the "finder of fact" were rejected by the Courts, making it impossible for this Petitioner to fulfill the requirements set by the Courts to allow her to have her day in Court. She is not requesting an automatic win, she just wants the opportunity to present her facts and afford the opposing party to be allowed to answer her allegations in a court of law and have the "finder of fact", which in this case is a jury, to determine which party's set of facts is to be believed. This is a not an unreasonable request of this Petitioner, it is her right. Below is a sampling of opinions that support this Petitioner's position in requesting that this Court set aside/vacate/reverse this Respondent improperly achieving Summary Judgment and allow this Petitioner to rightfully proceed to trial so justice can be served fairly and without bias.

"... [t]he state may violate the constitution by failing to provide an appropriate procedural response. There is a constitutional duty to provide fair procedures to give the citizen the opportunity to try to prevent the deprivation." Daniel v Williams, 474 US 327 at 337/8, (1985). *The use of technicalities to deprive a litigant of his appeal is a violation of the Rules of Civil Procedure, and a constitutional deprivation. "[W]e no longer approach pleadings searching for a flaw, a technicality upon which to strike down a claim or defense as was formally the case at common law"* Bertlesman & Phillips, Ky Practice, Vol 6 at p. 144. - Smith v Isaacs, 777 SW2d 912 at 715, (1989). *".....[v]ague pro se appeal will be heard."* SEC v Vanco, 283 F2d 304 at 305, (3rd Cir 1960) *"Significantly, the Haines case involved a pro se complaint – as does the present case – which requires a less stringent reading than one drafted by a lawyer."* Puckett v. Cox United States Court of Appeals (1972). Judge Crawley (from the Appellate Court in Alabama where this Petitioner's appeal was filed) *stated "the Language used by a pro se litigant can not be viewed in a technical sense."* ____ So. 2d at ____. *"We cannot and should not expect a pro se litigant to use*

the same technical precision that we expect from a lawyer."…..Further stating that "A court is to construe pleadings so as to do substantial justice, Rule 8 (f), Alabama Rules of Civil Procedure." Quoted from Supreme Court of Alabama, 1970987, 1999. "[A]llegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief'." See Volume 2; Appendix K for full and numerous Citations. This Petitioner was denied a trial due to a "technical ground" which will be fully explained in the Statement of the Case (expert witness testimony was not allowed and then the Courts held me to mandatory expert witness testimony in this case, although there are many alternative allowed by Law and expert witness testimony does not even apply in cases such as this one where deceit is involved and then her appeals were denied with no opinion *"However, a deceit count was revised and permitted to go to the jury, as it would not require expert testimony." 17 Mass. App. At 565-567, 460 N.E.2d at 1050.*. However, at this point in this Petition, the Petitioner is showing the Court that she is an involuntary Pro'se litigant, denied her rights to legal guidance and counsel, that was incorrectly held to the same standards as an experienced attorney - which is against the legal precedent set by the United States Supreme Court, her claim was not construed liberally, her appeal, although not vague, was not heard, the Courts in Alabama did not construe the pleadings so substantial justice was done, as required by the *Alabama Rules of Civil Procedure*. In addition, the Courts incorrectly assumed that the plaintiff could prove no set of facts in support of her claim which would entitle her to relief and as you can see by the above rulings, this Petitioner was not given the consistency of the interpretation of the Law, denying her equality under the Law which is in violation of the Fourteenth Amendment to the Bill of Rights which will be discussed further below. All of the above mentioned actions and/or lack of actions (whichever applies), has

deprived this litigant/Petitioner of her trial and her appeal and as cited in the case above is a violation of the Rules of Civil Procedure, and a constitutional deprivation. And as cited above from yet another case, [t]he state may have violated the constitution in this case by failing to provide an appropriate procedural response. There is a constitutional duty to provide fair procedures to give the citizen the opportunity to try to prevent the deprivation and this was not afforded to this Petitioner.

Another point of contention here is that this Involuntary Pro'se Litigant's assertions are to be taken as fact. *"Because Plaintiff is pro se, the Court will consider factual averments (declarations or assertions) in his responses as evidence to the extent that they are not contradicted by other sworn testimony of Plaintiff."* *See Simpson v. Horn, No. Civ. A. 95-8028, 1998 WL 559802 at *2 (E.D.Pa. Aug. 31, 1998); Hackman v. Valley Fair, 932 F.2d 239, 241 (3d Cir. 1991)* *"allegations presented in a pro se complaint are held to less stringent standards than formal pleadings drafted by lawyers."* *(Memorandum Opinion at 2 n.2) (citing Hayes v. Muller, No. CIV. A. 96-3420, 1996 WL 583180, at *2 (E.D. Pa. Oct. 10, 1996), "Furthermore, "a court must assume a pro se plaintiff's factual allegations are true and construe his claim liberally."* The Court's in Alabama did not take her assertions as fact because if they had, summary judgment on the basis of no expert witness testimony (even though death was involved, a continuance was requested before the end of discovery, and another expert witness was not allowed to be selected), should not appropriately be granted by Rule and Law when there was claims of fraud, the credibility of either party was in question, deceit, obvious negligence, not disclosing to the client what had occurred during the course of the handling of her cases (this Petitioner was the former client of the Respondent, who is her former attorney), an undisclosed conflict of interest, an identical case that involved her machine partner also injured and he did have "any other lawyer" and he properly received his compensation, benefits, and medical care years ago, etc. If equal interpretation and the Law had been followed, this Petitioner's factual allegations would have been considered by the Courts as true and summary judgment would not

have been improperly granted to this Respondent and I would have been granted equal protection under the Law in regards to my machine partner being identically injured and he did receive his benefits on the same day as my "disability determination" only.

II.The Courts in Alabama clearly violated this Petitioner's Constitutional Rights by violating her Fourteenth Amendment rights.

The Fourteenth Amendment, Section 1 declares: *"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."*

The Fourteenth Amendment REQUIRES STATE governments to respect due process of law and gives the federal government the power to enforce this requirement. The Fourteenth Amendment states *"Nor shall any State deprive any person of life, liberty, or property, without due process of law"*. Due Process requires that government must use fair procedures in fulfilling its responsibilities. This is known as Procedural due process. It requires that the procedures used by government in making, applying, interpreting, and enforcing the law be reasonable and consistent. Procedural due process limits the powers of government in order to protect individual rights and requires the Courts to use fair and reasonable procedures and to treat people equally under the law. Over the years this traditional definition of due process of law has been expanded to include substantive due process as well. This requires that the "substance" or purpose of law be constitutional.

The Fourteenth Amendment concludes by declaring that no STATE may *"deny to any person within its jurisdiction the equal protection of the laws."* By this amendment gave a new importance to the principle of equality in the Constitution. *As one of the Fourteenth Amendment's authors, Senator Jacob M. Howard of Michigan, declared; "It establishes equality before the law, and it gives, to the humblest, the poorest, the most*

despised...the same rights and the same protection before the law as it gives to the most powerful, the most wealthy, or those most haughty...Without this principle of equal justice to all men and equal protection under the shield of the law, there can be no republican government and none that is really worth maintaining."

The authors of the Fourteenth Amendment wanted to create a society in which all people were treated equally before the law. Equal protection of the laws meant that no individual or group was to receive special privileges or be deprived of certain rights under the law. The Fourteenth Amendment became a remedy by which the federal government can prevent state and local governments from violating individual rights.

When the Bill of Rights only limited the power of the federal government, it was of almost no importance in protecting the rights of individuals. The great change occurred when the Supreme Court applied the protections of the Bill of Rights to the states through the due process clause of the Fourteenth Amendment. Instead of limiting only the power of the federal government, the Bill of Rights now also limits the power of STATE governments in an effort to achieve the fundamental purpose of the Constitution - protecting the rights of American citizens.

As shown above in II under the heading of "Involuntary Pro'se Litigant" it is clearly shown by Rules, citings, and Law that this Petitioner did not receive equal protection under the Law and that inconsistent interpretation was incorrectly applied. The Petitioner has shown the Court that she is an involuntary Pro'se litigant, denied her rights to legal guidance and counsel, that was incorrectly held to the same standards as an experienced attorney - which is against the legal precedent set by the United States Supreme Court, her claim was not construed liberally, her appeal, although not vague, was not heard, the Courts in Alabama did not construe the pleadings so substantial justice was done, as required by the *Alabama Rules of Civil Procedure*. The Petitioner also showed that the Courts incorrectly assumed that the plaintiff could prove no set of facts in support of her claim which would entitle her to relief and as you can see by

the above rulings, this Petitioner was not given the consistency of the interpretation of the Law, denying her equality under the Law which is in violation of the Fourteenth Amendment to the Bill of Rights. The Courts also did not consider her factual allegations as true as in which they were suppose to do considering she was an involuntary Pro'se litigant, ignorant of proper procedure and struggling to attempt to follow each and every one of the complicated rules. All of the above mentioned actions and/or lack of actions (whichever applies), has deprived this litigant/Petitioner of her day in court and her appeal and as cited in the cases above is a violation of the Rules of Civil Procedure, and a constitutional deprivation, in which the State did not provide an appropriate procedural response, as well as a Violation of her Fourteenth Amendment's Rights.

As clearly shown above, the Courts in Alabama did not apply and/or interpret the law consistently and therefore this Petitioner's Fourteenth Amendment's Rights were violated. The Fourteenth Amendment also requires the State to provide reasonable procedures to give both parties an equal chance to advance their case to trial. In the case at hand, it was made impossible for this Petitioner to advance her case to trial as will be further discussed in IV below. As discussed in IV below, this also violated her Fourteenth Amendment's Rights by requiring that this Petitioner "purchase justice pre-trial" and all reasonable alternatives to "Justice for Sale" was rejected by the Courts although they were allowed by Law.

The Petitioner also feels that her Fourteenth Amendment Rights have been violated and she is not receiving equal protection under the Law. This case/appeal/Petition involves an attorney's firm (which this Petitioner discovered after the Respondent was granted Summary Judgment) that the head of this Respondent's firm holds a powerful position on the Executive Committee of the Birmingham Bar Association. The Petitioner is just an average citizen that was severely injured in a manual labor position (hospitalized over 18 times with these injuries) who hired this Respondent's firm to assist her in receiving the worker's compensation

benefits that she was rightfully entitled to. Her machine partner was also identically injured and he did receive his worker's compensation, benefits, and medical care years ago and he used "any other lawyer" so that burden was automatically satisfied. A worker's comp trial was held and this Respondent's younger associate that worked for this firm (he no longer works for this firm and he also no longer practices Law) failed to submit critical evidence before the Judge made his ruling. After the adverse ruling, this Respondent scrambled to attempt to have the evidence entered into the Record. Evidence excluded included but was not limited to the supervisor's testimony that immediate notice of injury was given and he witnessed her injuries immediately after this was reported, numerous physicians statements that her injuries were job related, a two page evaluation from the physician assigned to do a disability determination in which she stated that this Petitioner's injuries were solely job related, not caused from any pre-existing condition, nor was it caused from any other accident, statements from another company physician stating that the Petitioner's injuries were a result of the October 30, 1995 accident at work, not from any pre-existing condition, nor was it from any other accident, the numerous testimonies of the Petitioner's co-workers supporting her position, etc. The original opposing counsel, Mr. Craig Alexander, defending the Petitioner's employer, successfully argued at the Motion of Reconsideration that although the critical evidence that was not entered prior to the Judge's ruling was of such quality that it could have an effect on the outcome of the trial, that it could not be considered because this Petitioner's attorney had this evidence at the time of trial and that he had failed to timely submit the critical evidence prior to the Judge making his ruling. This caused all of the critical evidence never to be considered by the trial Court or the upper level courts on appeal. The Petitioner was led to believe that the adverse ruling had been caused by the original defendant's counsel breaching an agreed upon pre-trial stipulation and the Petitioner's attorney's (who is the Respondent in this Petition) failure to timely submit the critical evidence was not

disclosed to the Petitioner. After all appeals were exhausted on the worker's comp case (all were denied - no opinion) this Petitioner had a civil but firm confrontation with the original defendant's attorney (the one that was unjustly blamed for the adverse ruling). It was then that this Petitioner discovered that it was her own attorney that had deceived her and had not disclosed to her that it was their firm that had failed to timely submit the critical evidence into the Record before the original trial judge made his ruling and that the original defendant's attorney successfully argued that due to their error that the critical evidence could not be considered by the trial or appellate courts, even though the evidence was of such quality that it could have an effect on the outcome of the trial. This Petitioner was drug through the process of ineffective appeals (based on her attorney's undisclosed conflict of interest) and what had occurred during the handling of her cases was not disclosed to her. This prevented her from making an intelligent and informed decision on how to proceed with her cases. No knowing the truth and after all appeals were exhausted, this Petitioner confronted the original defendant's attorney to ask him how he could look at himself in the mirror by breaching pre-trial stipulations which caused an adverse ruling. How could he intentionally cheat a severely injured worker out of her justly deserved benefits? It was then that the original defendant's attorney turned over documentation proving that it was the Petitioner's attorney's error (and the Respondent in this case) and not a breach in a pre-trial stipulation that had caused the adverse ruling. So in this Petition, we have an attorney in a powerful position over other attorneys (which this Petitioner feels is one of the factors which has prevented her from obtaining adequate counsel at a reasonable price) and a severely injured manual labor worker who holds no power or influence in the community. After the unreasonable rulings and other events that have occurred throughout this Petitioner's experience within the "justice" system, it is only natural for her to wonder if her Fourteenth Amendment Rights that states "*nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any*

person within its jurisdiction the equal protection of the laws." considering she is a "nobody" in the community that is up against an attorney that is in a powerful position over other attorneys in the area. Situations like these are the basis for our Fourteenth Amendment and just like the police have the "big blue wall" other professions such as this one also protect their own. The Law and the Fourteenth Amendment demands that all Litigants be given an opportunity to be heard even if one party is "of powerful influence" and the other is an average citizen. The powerful position held by one party should not interfere with justice being fairly served. In addition to the Fourteenth Amendment being applied as intended, below is other citings that support this Petitioner's position: *".....[d]ue process of law guaranteed by the 14th Amendment has regard to substance of right and not to matters of form and procedure. . . the entire course of proceedings, and not merely one step, must be considered. . .* Frank v Mangum, 237 US 309, (1916. *Appeal is a right, due to all litigants equally, under whatever rules the state sees fit to impose. What is fair procedure for one is to be equally applied to all. "[w]hen appeal is afforded. . . . it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the equal protection clause."* Griffin v Illinois, 351 US 12 at 18 (1955); See Vol 2, App. K for other laws supporting this citation; *"appeal is an element of Due Process and protected by the 14th Amendment.* Maxwell v Dowell, 176 US 581 at 602, (1899), cites Leeper v Texas, 139 US 462 at 467, (1891); *"[n]o state can deprive particular person or classes of persons of equal and impartial justice under the law without violating the provisions of the 14th amendment of the constitution. . . due process of law within the meaning of the constitution is secured where the law operate on all alike and no one is subject to partial or arbitrary exercise of the powers of the government. . . "* Caldwell v Texas, 137 US 692 (1891) cited in Merchant v Penn RR, 153 US 380 at 382, (1893); *The denial of an appeal which is brought under the Rules of Civil Procedure is a constitutional deprivation and a denial of access to the court when it is denied in an unreasonable and arbitrary manner. ". . . [i]n this court the state admits, as it must, that a discriminatory denial of the statutory right of appeal is a violation of the equal protection clause of the 14th Amendment . . . . ."*

Cochran v Kansas, 316 US 255, as cited in Dowd v Cook, U S, 340 US 206 at 208 (1950); Other citations to this ruling in Vol. 2 Appendix K- Pennoyer v Neff, 95 US 714 at 733, (1877); Davidson v N Orleans, 96 US 97, 104, 107, (1878); Hurtado v Calif, 110 US 516, (1883); Missouri RR v Humes, 115 US 512 at 519, (1884/5); as cited in Dent v W VA, 129 US 114 at 122/24, (1888); ".....[a]ny . . . state statute - must be applied uniformly . . . . . ; otherwise the Equal Protection clause of the 14th Amendment is violated." Regan v NY, 349 US 58 at 66, (1954) "[a]lthough not specifically mentioned in the constitution, the right of court access is based upon the 1st and 14th Amendment" Vaughn v Trotter, 516 F Supp 886 at 892, (MD Tenn 1980); "At the base of this skepticism has been the suspicion that summary judgment "borders on denial of due process in that it denies the opposing party his day in court." Olson v. Auto Owners Insurance Company, 700 SW 2d 882, 884, (MO App.E.D. 1985) (C. 389 #1)

III. This Petitioner is being Held to a Mandatory, Unconstitutional, Process That Results in Justice for Sale.

1. Under No Circumstances is Justice for Sale

2. No Mandatory Expert Witness Testimony is Required in this Particular Case Due to Deceit, An Undisclosed Conflict of Interest on this Appellee/Respondent's Part, Neglect, Breach of Agreement, An Attorney Failing To Inform His Own Client of His Firm's Errors Which Resulted In Critical Evidence Not Being Considered By The Trial Court or the Upper Level Courts on Appeal, Etc.

3. Cross Examination of the Appellee/Respondent's Expert Witness Pre-Trial is also Justice for Sale. The Respondent's Expert Witness Also Used the Incorrect "Level of Care" to be Applied to the Respondent's Performance

4. Many Alternatives to Expert Witness Testimony Acceptable by Law were Proposed and Improperly Rejected by the Court

See App. P for full citation ALABAMA DECLARATION OF RIGHTS - (Article I of the 1901 Constitution of Alabama) as amended through 1966 - ARTICLE I. DECLARATION OF RIGHTS / Section 13.

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1. Under No Circumstances is Justice for Sale

JUSTICE FOR SALE is clearly not allowed by our Law. The Federal Constitution and the Alabama Constitution and our

Law states *"That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of Law; and right and justice shall be administered without sale, denial, or delay"*. As shown below, a mandatory expert witness is not required by Law in this case or appeal (due to breaches in agreements, neglect, deceit, an undisclosed conflict of interest, withholding errors made by the Petitioner's own attorney - deceiving his own client and not informing the Petitioner of the errors which denied the Petitioner the true facts of what had occurred during the handling of her cases which denied her the opportunity to make an informed and intelligent decision in how to proceed with her case, etc. The Respondent argued and the trial court held that mandatory expert witness testimony was required in this case and as shown below, mandatory expert witness testimony in this case is not required by Law and is not required in all cases such as this one which shows that again the inconsistency in applying the Law to this case which also is in violation of the Fourteenth Amendment. If mandatory expert testimony were required in all cases such as this one, it would be justice for sale and unconstitutional. Therefore due to the circumstances, this Petitioner has been unconstitutionally required to purchase, pre-trial, her attempt to receive justice.

2. No Mandatory Expert Witness Testimony is Required in this Particular Case Due to Deceit, An Undisclosed Conflict of Interest on this Appellee/Respondent's Part, Neglect, Breach of Agreement, An Attorney Failing To Inform His Own Client of His Firm's Errors Which Resulted In Critical Evidence Not Being Considered By The Trial Court or the Upper Level Courts on Appeal, Etc.

A mandatory expert witness is not required by Law in this appeal (due to breaches in agreements, neglect, deceit, and undisclosed conflict of interest, the Petitioner's former attorney failing to inform her (his client at that time) of his firm's errors. This Respondent's firm failed to enter critical evidence which included but was not limited to notice of immediate injury, supervisors statements and reports that supported the injured employee's (which is the Petitioner in

this Petition) account of events, numerous co-worker's testimony that supported this Petitioner's claim, numerous documents and statements from physicians that stated that this Petitioner's injuries were severe, solely job related, and not the result of any pre-existing condition, nor were her injuries the result of any other accident, etc. This Respondent's firm failed to enter this evidence prior to the Judge presiding over the "underlying case or the worker's comp case" made his ruling. After the adverse ruling, this Respondent scrambled to attempt to enter critical evidence supporting the Petitioner's claim but the original opposing counsel successfully argued that Tidwell's (the Petitioner in this Petition) attorneys had this evidence at the time of trial but had failed to enter the evidence prior to the Judge making his ruling and that due to their error that the evidence could not be considered by the trial court or the upper level courts on appeal. In the Opposing Counsel's Post Trial Motion (in the underlying case), he states that the evidence was of such quality that it could have an effect on the outcome of the trial but due to the Petitioner's Counsel's (Respondent in this Petition) untimely submission of the evidence that the critical evidence could not be considered. Instead of being informed of what had occurred, the Petitioner was led to believe that the original opposing counsel had not honored a pre-trial stipulation (and that burden of proof was not an issue and that only the degree of her disability was to be determined at her hearing). After all appeals were exhausted, a firm but civil confrontation occurred between this Petitioner and the original opposing attorney (which was blamed by the Respondent for the unjust adverse ruling) took place. It was then that this Petitioner learned that it was her attorney (and this Respondent) that erred and they did not disclose their error to her, which placed their interest above that of their client. This should be considered a "cardinal sin" among the legal profession. The original opposing counsel turned over documents to this Petitioner proving that he in no way breached any pre-trial stipulation, burden of proof was an issue at trial and the hearing was not a "disability

determination only", nor was he the cause of the adverse ruling. This was this Respondent's excuse for not entering the overwhelming evidence establishing burden of proof. This was untrue and the client was deceived. In a rare but courageous act, this attorney has composed and submitted into evidence in this case a two page affidavit on this Petitioner's behalf. Although this attorney is an "expert witness" (on the original witness list) and his affidavit was accepted into evidence, his testimony was not considered that of an "expert" because he is a factual witness and can not be paid for his testimony. This is clearly justice for sale. The Opposing Attorney's Affidavit in the Underlying Case is located in he Record at C. 309.

3. Cross Examination of the Appellee/Respondent's Expert Witness Pre-Trial is also Justice for Sale, The Incorrect Level of the Respondent's Performance was evaluated according to the Respondent's own "expert affidavit", and the Petitioner was repeatedly denied simple answers during discovery which impeded in her questioning the Respondent's expert and it also impeded in her properly hiring an expert witness.

In addition, by due process of Law, this Appellant/Petitioner is entitled to cross examine the Appellee's/Respondent's witness at trial. She is not required to "buy" the opportunity prior to trial in a deposition. This could be considered "Justice For Sale" pre-trial. If after the cross examination of the Appellee's/Respondent's expert witness in a hearing, the Judge determines that it was not important to have the notice of injury in a worker's comp case, the supervisor's testimony confirming that immediate notice was indeed given, statements from physicians stating that her injuries were severe and solely job related - not caused from any pre-existing condition nor was it caused from an other accident, and that her machine partner had been identically injured and he did receive his worker's compensation benefits with "any other lawyer", then the Judge can issue Judgment as a Matter of Law. Since it is an elementary fundamental of Law that the injured employee provide proof of notice of injury, the supervisors statement acknowledging that all claims made by the injured employee

are truthful, and the many physicians statements which confirmed that the injured employee's injuries were solely job related and not the result of any pre-existing condition or any other accident, and that her machine partner was identically injured (also mentioned in the original opposing counsel's affidavit - he handled both cases for the Petitioner's employer), for the Appellee/Respondent's Expert to state that these matters are of no importance would be a misrepresentation and an insult to the Court. No reasonable court could conclude that these matters were of no importance and the pre-paid testimony that they are is requiring this Petitioner to pay for testimony pre-trial in an attempt to achieve justice. This again draws into question whether or not this is Justice for Sale.

In addition, the Respondent represented that the attorney that he would select to represent her in her worker's comp case would be a "worker's comp specialist". In the Respondent's expert witness' affidavit, the incorrect "level of care" was used. Instead of that of a general attorney, the evaluation of the Respondent's performance should have been that of a "worker's comp specialist". During the procedural portion of this case, the Petitioner requested that his affidavit be Stricken from the Record for two reasons (1) the incorrect level of care was used to evaluate the Respondent's performance according to his own claims at the time that he was hired, and (2) the Respondent repeatedly refused to provide answers during discovery such as what made him a "specialist"; he even refused to state how many worker's comp cases he had ever handled (ballpark range). This refusal or vague discovery answers impeded in the Petitioner's ability to prepare to question the Respondent's expert witness (if she could have afforded to at that time) and it impeded in her hiring an expert witness based on the appropriate level of care that the Law required the Respondents performance to be evaluated at. *Ala Code 1975, Statute 6-5-572 (3) (a) and (b); also see Statute 5-5 580* states that if a legal service provider advertises as a specialist, that his level of care should be evaluated as that of the "specialist" that he claims to be. This was not done in this case.

4. Many Alternatives to Expert Witness Testimony Acceptable by Law were Proposed and Improperly Rejected by the Court (all proposed to the Trial and Appellate Court are located in Appendix N.

In cases of betrayal and deceit, such as in this case, the Law does not even require any expert witness testimony and no other alternative to Expert Witness testimony is required, much less mandatory. However, in an attempt to offer alternatives to please the Court and insure that her case advance and properly be determined by "a finder of fact", the Petitioner proposed numerous alternatives to expert witness testimony acceptable by Law. The Court rejected all alternatives to expert witness testimony and the Court was unreasonable and in error by doing so. This violated the Petitioner's rights to due process and consistency in rulings which is required by the Fourteenth Amendment, where justice could ultimately and appropriately be served. The alternatives accepted by Law to pre-paid expert witness testimony allowed by Law but all denied by the Court include but is not limited to the following (See documents submitted to trial court in volume 2 appendix M:

1. In a rare but courageous act, the original defendant's attorney that handled this Petitioner's case in the underlying case, voluntarily composed and submitted into evidence in this case a two page affidavit on this Petitioner's behalf. Although this attorney qualifies as an "expert witness" (on the original witness list) and his affidavit was accepted into evidence, his testimony was not considered that of an "expert" because he is a factual witness and can not be paid for his testimony. This is clearly justice for sale. For the original opposing counsel to come forth voluntarily on the Petitioner's behalf should signal the Court's that the Petitioner has suffered a substantial injustice. How many other Petitioner's have the affidavit and support of the original defendant's attorney that handled the underlying case in a legal malpractice action? This affidavit is in the Record at C. 309.

2. The Petitioner's machine partner was also severely injured. He received his worker's comp, benefits, and

medical care years ago. The original defendant's attorney in the underlying case also handled this Petitioner's machine partner's case for their employer and he does mention this in his affidavit supporting this Petitioner's position. With her machine partner identically injured, this should be sufficient to satisfy the "in a like" case standard and the hypothesis of an expert witness can be substituted for actual facts in this case instead of a theory or educated guess. To require the Petitioner to purchase an educated guess when actual events that occurred can be used which are already admitted to by opposing counsel, this would surely be considered Justice for Sale and unconstitutional under any Court's reasonable standards. This also shows the "inequality" in the rulings, which goes back to this Petitioner's violation of her Fourteenth Amendment Rights. The outcome of her and her partner's worker's comp trial were inconsistent. He received benefits, wages, and medical care years ago while working on the same machine and performing the same job duties. The Partner's settlement and this Petitioner's worker's comp trial (the underlying cases) were handled on the very same day. The trial Court did not have the benefit of this witness' testimony because my former attorney and the Respondent never bothered to contact this witness, nor did they even bother to contact any supervisors or other co-worker's until after the adverse ruling had already been announced.

3. In cases such as this one, no expert witness testimony is required because the Petitioner is not asserting that her former attorney did not select the correct legal strategy for her cases, this sort of claim would benefit from an expert witness due to the fact that it would be an educated guess of how another theory or plan might have worked. This case is about the Respondent having a legal strategy, failing to follow their own plan, not informing their own client (which is the Petitioner), unjustly blaming opposing counsel for the adverse ruling, when it was their own errors that they failed to disclose to their client. This type of breach does not require any expert testimony. When a person claims that he is handling something and then he fails to do it, hides the error and fails to disclose what has occurred to his own

client, that has nothing to do with "similar providers" in the area. This involves fraud, misrepresentations, deceit, etc. as alleged in the original complaint. Allegations of deceit under the Law do not require any expert witness testimony *"However, a deceit count was revised and permitted to go to the jury, as it would not require expert testimony."* 17 Mass. App. At 565-567, 460 N.E.2d at 1050. Also, a new ruling of Law in the State of Alabama which overruled Mandatory expert witness testimony and expanded the exceptions to the expert witness rule was announced on November 27, 2002 after this case was on Appeal but before the Supreme Court denial. See Alabama Supreme Court Case 1011582 11/27/02 Heath v. HealthSouth Medical Center, 2002). And see Motion filed with the Alabama Supreme Court in my request to allow expert witness exceptions that applied to my case. They Alabama Supreme Court Denied my Petition with No Opinion and this also was a violation of my 14th Amendment Rights to equal protection under the Law. Also, this case is of National Importance as Described in Volume 2, App. O.

4. By reviewing this Petition so far, one would be inclined to believe that this Petitioner did not have an expert witness selected. Even if she had not, this would be a legal technicality which should not totally avoid a decision on the merits for any litigant as shown by the Law below. However in this particular case, that is especially true because this Petitioner is an involuntary Pro'se litigant and as argued above, it is against the legal precedent set by the United States Supreme Court applicable to the Pro'se to deprive those special litigants of their appeals on technicalities. So even if this Petitioner did not have an expert witness, it would be a technicality and as any litigant but especially an involuntary Pro'se litigant who had been denied her rights to counsel, she should have been given a fair opportunity to try to prevent the deprivation. Here are the facts of what occurred with this Petitioner's expert witness. As shown in the Record at C. 231-C. 234, it is fully explained that the Petitioner selected an expert witness and a deposition was scheduled. This was in October (just after the tragic events of September 11th). An emergency arose and the Petitioner's

expert witness had to leave the country to save a sick child (she adopted him) from Tajikistan. The Respondent was notified and the deposition was canceled. The Petitioner confirmed with the Court Reporting Agency that the deposition was indeed cancelled. Before the Petitioner's expert witness returned from overseas (travel was extremely difficult due to the terrorist events and the extra security in trying to travel during this period of unrest), the expert witness's mother suddenly and unexpectedly died. Due to these reasons, the Petitioner requested an extension in discovery so the Respondent would have the opportunity to deposition this expert witness if they desired to do so. The trial Court denied the Petitioner an extension in discovery even though the expert witness sent him an affidavit explaining the situation of the sudden death in her immediate family and that she was unable to testify at that time. The Respondent's counsel set up a "fake deposition" knowing that neither the Petitioner, nor her witness was notified of a deposition that was to take place. Then the Respondent entered this "fake deposition" into the Record along with their Motion of Summary Judgment. When the Petitioner received the Respondent's Motion for Summary Judgment, she was upset when she saw the "fake deposition" placed into evidence. The Petitioner was so upset that she took a witness, with pen and paper in hand, to the Court Reporting Agency and the Agency admitted that the deposition was canceled and that it was suddenly rescheduled by the Respondent's counsel's assistance and that they all were aware that the Petitioner or her witness were never notified that a deposition was ever even scheduled (Affidavits of the three witnesses can be found at C. 195, C. 197, and C. 262. The "fake deposition" is located in the Record at C. 174 - 176. The Petitioner asked the trial court to strike the erroneous deposition that was placed in evidence but the Petitioner's request was denied. The Petitioner, the witness taken to the Court Reporting Agency, and the expert witness all signed and submitted affidavits confirming the above but the bogus evidence was allowed to remain in the record, along with the affidavits that explained

what had actually occurred. Other issues that occurred included the Petitioner repeatedly requesting the Courts to compel Discovery from the Respondent - this was never done and the Petitioner's rights to full discovery was impeded. The Petitioner requested a continuance for her expert to return from her mother's funeral but that request was also denied. When a continuance was denied to await the return of the expert, the Petitioner requested to be allowed to select another expert - her request were denied. When the expert was out of town due to her mother's death, the files that she was reviewing was locked in her office and unavailable to the Petitioner. There was only one other way to get that "expert opinion". It was from the original defendant's attorney that had handled the underlying case and had files of his own. In a rare move, this attorney composed and submitted a two page affidavit on the Petitioner's behalf that by law substituted as an expert witness opinion. There was only one problem. This attorney was a fact witness because he was involved in the underlying case and he could not be paid for his testimony, therefore, his affidavit was not considered an expert opinion. This made it impossible for this Petitioner to advance her case to trial due to the unreasonable denials by the Courts. In addition, other Laws and Doctrines that are acceptable were also rejected further eliminating all possibilities of this Petitioner being allowed her day in court. The other acceptable Laws and Doctrines included: 1) C. 220 of the Record shows that the Petitioner submitted substantial and concrete evidence supporting her claims with 67 attached exhibits to her opposition to the Defendant's Motion of Summary Judgments which by law does not require expert witness testimony. See Brief of the Appellant, page 23. 2) Brief of the Appellant, page 25 - The Petitioner applied the Doctrine of Res ipsa fully explaining the conditions backed by the supporting citing of Law that states *"A plaintiff who establishes the elements of res isa loquior can withstand a motion of summary judgment and reach the jury without direct proof of negligence"*. *Cox v. May Department Store Company 903 P. 2d 119 (1995).* This was also improperly rejected by the Courts.Many other

alternatives were presented to the trial Court and the Appellate Courts but due to the limitation in this Petition all can not be adequately argued. Proper arguments are located in the Record and in the Brief of the Appellant to the Alabama Supreme Court. *". . . [t]he state may violate the constitution by failing to provide an appropriate procedural response. There is a constitutional duty to provide fair procedures to give the citizen the opportunity to try to prevent the deprivation.* Daniel v Williams, 474 US 327 at 337/8, (1985); *"[d]ecisions on the merits are not to be avoided on the basis of "mere technicalities"* Foman v Davis, 371 US 178 at 181, (1962); NAACP v Alabama, 377 US 288, (1964); Hovel v Elliott, 167 US 409 at 413/14, (1897); *"The use of technicalities to deprive a litigant of his appeal is a violation of the Rules of Civil Procedure, and a constitutional deprivation." "[W]e no longer approach pleadings searching for a flaw, a technicality upon which to strike down a claim or defense as was formally the case at common law"* - Bertlesman & Phillips, Ky Practice, Vol 6 at p. 144. - Smith v Isaacs, 777 SW2d 912 at 715?, (1989); *"[T]he Federal Rules reject the approach that pleading is a game of skill in which one misstep by council may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits."* Conley v Gibson, 355 US 41 at 48, (1957); See Additional Citations to this Law in Volume 2, Appendix K); *"[i]n determining whether rights were denied we are governed by the substance of things and not mere form."* L&N v Schmidt, 177 US 230 at 236, (1899) as cited in Simon v Craft, 182 US 427 at 436, (1900); In Re Summers, 325 US at 567, (1944) citing Nashville C&RR v Wallace, 288 US 239 at 249, (1918); Central Vermont RR v White, 238 US 507 at 511, (1914) as cited in US v Obermeier, 186 F2d 243, (1950); *"..... [d]ue process of law guaranteed by the 14th Amendment has regard to substance of right and not to matters of form and procedure . . . the entire course of proceedings, and not merely one step, must be considered"* Frank v Mangum, 237 US 309, (1916) *"[W]hile technical rules of pleading are maintained to protect rights of parties, under the code system technical rules should not be used to defeat the ends of justice."* Catron vs Jones, 135 SW2d 419, (1940); Roe v Gentry, 162 SW2d 208 at 210, (1942); Jordan v Olive Hill, 162 SW2d 229 at 231, (Ky 1942); Logan v Bradford, 178 SW2d 607, (Ky 1944); Stivers v Baker, 9 SW 491 at 492, (Ky

1888); Ashland Oil v Hudson, 275 SW2d 585, (Ky 1955); Maggard v Johnson, 229 SW2d 764, (Ky 1950); McBride v Moss, 437 SW2d 726, (1969);

Unreasonable Denials also Violated This Petitioner's Rights to Present Her evidence to a Finder of Fact, So Justice Could be Served. As discussed above, Justice for Sale is clearly not allowed by our Law, however in this case, this Petitioner also had to endure denials which were unreasonable. Here again our Federal Constitution and the Alabama Constitution and our Law states *"That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of Law; and right and justice shall be administered without sale, denial, or delay"*. The Petitioner Tidwell did have an expert witness named but due to death, which could not be prevented, she could not testify before the deadline. The Petitioner requested a continuance several times before and after the discovery deadline or to be allowed to select another expert. All requests were denied by the trial Court. Under Our Law, Summary Judgment is Not appropriate in cases such as this one due to the questionable credibility of one of the parties. Also all doubts were to be resolved in the Petitioner's favor and they were not. This has violated her rights to the 7th Amendment. This Petitioner Requested a Trial by Jury in this Civil Matter which is a Constitutional Right afforded to her under the *Seventh Amendment*. Instead, Summary Judgment was improperly granted to the Defendant/Appellee/Respondent denying the Petitioner her rights to a trial by jury afforded to her under the Seventh Amendment of our Constitution. It is the Petitioner's right to have a finder of fact, which in this case is a jury, to determine which party's set of facts is to be believed. In addition, summary judgment is inappropriate according to our Law in cases such as this one. In this case, the credibility of one of the party's has been called into question and is therefore not a matter to be settled in a Motion for Summary Judgment. Tidwell was the non-movant and all doubts were to be resolved in her favor. They clearly were not. The Law states *"In reviewing the district court's grant of summary judgment we*

must review the evidence and all reasonable factual inferences in the light most favorable to the party opposing the motion. See Welch v. Celotex Corp., 951 F.2d 1235, 1237 (11th Cir.1992). In addition to the Law dictating that summary judgment is not appropriate when the credibility of one of the parties has been questioned, *"When a party's credibility has been called into question "which at the "summary judgment" is inappropriate, because it is for the trier of fact to decide which story is to be believed."* Barbour v. Merrill, 48 F.3d 1270, 1277 (D.C.1995).See Combs, 106 F.3d at 1537 *As quoted in Chapman v. AI Transport, Nos. 97-8838, 97-9086 and 97-9269, United States Court of Appeals, Eleventh Circuit, July 13, 1999.* Volume 2, App. K

This Plaintiff/Petitioner has been forced into a Pro'se position and because of this the Law states: *"Because Plaintiff is pro se, the Court will consider factual averments (declarations or assertions) in his responses as evidence to the extent that they are not contradicted by other sworn testimony of Plaintiff."* See Simpson v. Horn, No. Civ. A. 95-8028, 1998 WL 559802 at *2 (E.D.Pa. Aug. 31, 1998); Hackman v. Valley Fair, 932 F.2d 239, 241 (3d Cir. 1991) *"allegations presented in a pro se complaint are held to less stringent standards than formal pleadings drafted by lawyers."* (Memorandum Opinion at 2 n.2) (citing Hayes v. Muller, No. CIV. A. 96-3420, 1996 WL 583180, at *2 (E.D. Pa. Oct. 10, 1996), *"Furthermore, "a court must assume a pro se plaintiff's factual allegations are true and construe his claim liberally."* The Court's have erred by not believing this Involuntary Pro'se Litigant.

The Rules of Procedure 56 was not appropriate in this case involving an Involuntary Pro'se Litigant

Courts must accord "special attention" to Pro'se litigants faced with summary judgment motions. Ham v. Sith, 653 F.2d 628 (D.C.Cir.1981) *"At the base of this skepticism has been the suspicion that summary judgment "borders on denial of due process in that it denies the opposing party his day in court."* Olson v. Auto Owners Insurance Company, 700 SW 2d 882, 884, (MO App.E.D. 1985) (C. 389 #1)

Although the Eighth Amendment is usually reserved for Criminal Litigants, "Cruel and Unusual Punishment" also applies in this Civil Case and it is a violation of the Petitioner's 14th Amendment rights. Due to the unjust

adverse ruling, the original defendant takes the position that my injuries are work related but because my attorney erred, that they are not responsible for my wages, benefits, or medical care. I now am left to serve a "life sentence" with no wages, benefits, or medical care. The medical providers also claim that this is work related and they aren't responsible for the medical bills and care either. I am less fortunate than a criminal defendant - at least they get a roof over their heads and medical care - I am not so lucky. My "only crime" was that I was a hard working employee that was severely injured on the job and had to hire an attorney to receive what I was rightfully entitled to in the first place. My attorney deceived me. The adverse effects that I will suffer for life is truly cruel and unusual punishment and if the Court refuses to correct this injustice, then what does our Law and the *Justice* System stand for? It is also a violation of my 14th Amendment Rights - I am not treated equally under the Law. Criminals get counsel and they are protected from cruel and unusual punishment - I am not afforded those Rights and Liberties which is in violation of my 14th Amendment Rights. The Cases Cited with the Trial Court and the Alabama Court of Civil Appeal's Denial/No Opinion Ruling do not apply to this case. The cases cited by the all of the Court, even in their No Opinion Rulings, are not relevant to the case at hand. There are so many differences; the cited cases are fully detailed in the Appendix to show the Court how these cases are not relevant to this case at all (See Volume 2). This is a case of attorney deceit, undisclosed conflict of interest, betrayal, etc. and not a "simple mistake" cited in these cases. In the other case referenced it involved an attorney who had the client's permission and when it didn't work, then he sued. These cases have no relevance to the appeal at hand. The Law in the cited cases are not relevant to this case and this lead the Courts to an erroneous conclusion in their ruling of this case. These comparisons were also used by the Court of Appeals and are not relevant to this case. See Appendix Index for each case cited by the Court as it compares to this appeal and Petition (Appendix is lengthy and is located in Volume 2/cases detailed and compared to this appeal).

Questions Presented for Review to the Courts in Alabama and Now to the Honorable U.S. Supreme Court and Copied in the Body of the Petition - In accordance with Alabama's Rules of Appellate Procedure the Petitioner, Tidwell, presented the following questions of first impression to the Ala Supreme Court and I now ask the Honorable United States Supreme Court to please consider the questions, conflicts, issues presented in this, the Body of my Petition:

Question # 1: "If an attorney fails to enter specific evidence supporting his client's position, resulting in the opposing counsel successfully having the critical evidence and testimony excluded from consideration of the trial court in a post trial motion, or excluded from consideration of the upper level courts on appeal, can that attorney conceal his error from his client? If breaches in agreements, neglect, deceit, and undisclosed conflicts of interest, etc., is shown, is expert witness testimony required?" (Question asked in Petition for Writ of Cert to the Ala Supreme Court, pages 3-4)

Question # 2: "If an attorney promises that a specific action will be handled and he fails to handle it, does the Law require expert testimony?" (Question asked in Petition for Writ of Certiorari to the Alabama Supreme Court, page 4)

Question # 3: "If opposing counsel in the underlying case in a legal malpractice action provides an affidavit and is willing to testify for the Plaintiff/Appellant/Petitioner, is the paid testimony of an expert still mandatory?" (Question asked in Petition for Writ of Certiorari to the Ala Supreme Court, p 4)

Question # 4: "If two employees operating the same machine at the same job and are identically injured, one employee receives his worker's comp but the other does not (because of the attorney's failures in Question 1), can this factual event be used in substitution for the educated guess of the expert witness? Does a litigant have to hire an expert witness to make an educated guess when an identical situation occurred? Can the actual events and identical situation be substituted for an educated guess of a paid expert witness?" (If not, is this considered Justice for Sale? (Question asked in Petition for Writ of Certiorari to the Ala Supreme Court, p 4)

CONCLUSION

As the Petitioner in this case, I have and will forever suffer the adverse effects of my attorney's dishonesty to me. This has left me in an impossible situation and I pray that this Court finds my plea for justice a cause that is important enough to warrant them granting my Petition. I know in these times it is unpopular with the Courts to file legal malpractice cases. But I would like to remind the Respondent and this Court that some legal malpractice cases are justified. The danger here is not the legal malpractice action, it is the Respondent not informing his own client of what occurred during their firm's handling of my cases. I thought that my attorney was someone that I could trust, not someone that was deceiving me and not giving me all of the facts denying me my rights to make an informed and intelligent decision on how to proceed with my cases. I was not given that opportunity, how would each of you feel. The legal malpractice claim, as unpopular as they are, is not the danger in this particular situation. The integrity of the attorneys that act ethically and honorably and the integrity of the justice system as a whole are the ones with their reputations jeopardized by the action and/or lack of actions (whichever may apply) of the few attorneys that deceive their own clients. Due to the above, I PRAY that this Honorable Court will reverse this Respondent's improperly achieved Summary Judgment and properly remand this case to trial so justice can be served and properly determined by a jury. Thank You for your consideration in this matter. The outcome of the rest of my life and my family's lives hang on your decision. We only ask that your decision be a fair one. And please remember, by your own words, *The United States Supreme Court has stated "The denial of a pro se litigant on technical ground is against the legal precedent from the US Supreme Court applicable to the pro se...[d]ecisions of the US Supreme Court rendered by written opinion are binding on all courts, state and federal. The court's holding is stare decisis and cannot be overruled except by the court itself. Even the court's dicta has persuasive precedential value."* Jordan v Gilligan, 500 F2d 701 at 707, (6th Cir ND Ohio 1974).